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**From:** Rosalie del Rosario - ... (Google Docs) <comments-noreply@docs.google.com>  
**Sent:** Wednesday, February 27, 2019 2:22 PM  
**To:** brian.ellrott@noaa.gov  
**Subject:** Draft text for me... - You may have already done this, but I...

Rosalie del Rosario - NOAA Federal added a comment to [Draft text for memo to file on environmental baseline](#)

**Rosalie del Rosario - NOAA Federal**

The rationale provided by DOI for why the future without-action condition is the appropriate baseline is based on an interpretation of the 9th Circuit Court of Appeals ruling in National Wildlife Federation v. National Marine Fisheries Service, a case regarding consultation on the effects of operating hydropower dams on the Columbia River. The DOI Solicitors contend that the 9th Circuit's ruling made it clear that the effects of a proposed action (i.e., Columbia River dam operations) cannot be in the environmental baseline, and therefore a without-action condition is needed to represent the environmental baseline for the CVP/SWP BA. However, the 9th Circuit's ruling was made because NMFS constructed an environmental baseline with effects that should have been, but were not, attributed to the proposed action (i.e., Columbia River dam operations). The court's issue was not that the environmental baseline cannot include any past or present impacts which are also part of the proposed...

You may have already done this, but I'd suggest you check with Ryan Couch, GC on FCRPS for confirmation.

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